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OFFICE OF PETITIONS

In re Application of
Tupis
Application No. 09/754,541
Filed: January 5, 2001
Attorney Docket No. 9D-HR-19690-Tupis
For: SEALED DAMPER ASSEMBLY

ON PETITION

This is a decision on (1) the petition under 37 CFR 1.181 for withdrawal of the holding of abandonment and (2) the petition under 37 CFR 1.137(b) for revival of an unintentionally abandoned application. Both petitions were filed on May 17, 2002 in the same paper.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to timely submit substitute drawings, a signed oath or declaration, and a \$130.00 surcharge for the late filing of the signed oath or declaration in reply to the February 15, 2001 Notice to File Missing Parts of Nonprovisional Application (Notice), which set an extendable two month period for reply. No reply being received by the Office, the above-identified application became abandoned on April 16, 2001. The mailing of this decision precedes the mailing of A Notice of Abandonment.

An allegation that an Office action was not received may be considered as a petition for the withdrawal of the holding of abandonment. If the allegation is adequately supported, the petition may be granted and a new Office action mailed. The showing required to establish nonreceipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹

A review of the record indicates no irregularity in the mailing of the February 15, 2001 Notice, and in the absence of any irregularity there is a strong presumption that the communication was properly mailed to applicants at the correspondence address of record. This presumption may be overcome by a showing that the aforementioned communication was not in fact received.

¹ See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993). *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971).

The showing presented in the instant petition is not sufficient to withdraw the holding of abandonment because a party with first hand knowledge of the alleged non-receipt of the February 15, 2001 Notice has not made a statement as to whether or not the Notice was received. The current attorney of record in St. Louis, Missouri attests to the fact that a thorough search of the application file was conducted. However, it is the staff at General Electric, located in Louisville, Kentucky, who actually would have received and processed the communication at issue. General Electric is the only party that can explain the docketing procedure and attest to the fact that the February 15, 2001 Notice was not received. A statement by General Electric is required in order to show non-receipt at the correspondence address of record around the time the Notice was mailed.

Accordingly, the petition under 37 CFR 1.181 is **dismissed**.

The petition under 37 CFR 1.137(b) is **granted**. The Offices acknowledges receipt of a sheet of substitute drawings, a signed declaration, and the surcharge for the late filing of the signed declaration.

The application will be returned to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 308-6712.



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